

Remarks:

Claims 25-27 remain rejected under 35 U.S.C. §102(b) as anticipated by Coultas et al. U.S. Patent No. 5,304,279. On reconsideration, the Examiner maintains that the recited "serpentine" conductive path of claim 25 reads on the spiral conductive path taught by Coultas et al. Applicant submits that this claim construction is contrary to case law and the examination standards of the MPEP.

While the Examiner is correct in that during prosecution, claims must be given their broadest reasonable interpretation, there are additional considerations when extrinsic references are used to interpret claim terms.

The Federal Circuit stated in *Phillips v. AWH Corp.* that "different dictionaries may contain somewhat different sets of definitions for the same words. A claim should not rise or fall based upon the preferences of a particular dictionary editor, or the court's independent decision, uninformed by the specification, to rely on one dictionary rather than another." 415 F.3d 1303, 1322 (Fed. Cir. 2005).

The definition of serpentine obtained by the Examiner from the American Heritage Dictionary is:

- "1. Of or resembling a serpent, as in form or movement;
sinuous * * *

The definition of serpentine in the Merriam-Webster Unabridged Dictionary is stated as:

- "1. relating to a serpent: resembling a serpent (as in form or movement)
* * *

- "3. winding or turning one way and another: meandering,
sinuous

- "4. having a compound curve whose central curve is
complex - used especially of the front of a piece of cabinet
furniture; opposed to oxbow.

The definitions from both dictionaries have resembling a serpent and sinuous (winding or turning one way and another).

MPEP § 2111.01 (II) mandates that: "If extrinsic reference sources, such as dictionaries, evidence more than one definition for the term, the intrinsic record must be consulted to identify which of the different possible definitions is most consistent with the applicant's use of the term. Brookhill-Wilk 1, 344 F.3d at 1300, 67 USPQ2d at 1137; see also Renishaw PLC v. Marposs Societa' per Azioni, 158 F.3d 1243, 1250, 48 USPQ2d 1117,1122 (Fed. Cir. 1998) ("Where there are several common meanings for a claim term, the patent disclosure serves to point away from the improper meanings and toward the proper meanings."). [Emphasis added.]

Intrinsic evidence from the present specification points toward sinuous, and away from *spiral*, to interpret the word "serpentine" in claim 25. For example,

- Paragraph [0004] of the Background section of the specification discusses instabilities associated with spirals, teaching away from this configuration as an ineffective solution to the problem;
- Paragraph [0010] of the Summary section of the specification discusses embodiments of the invention where the path "oscillates between different radii as it circles the axis of the chamber . . .";
- Paragraph [0043] of the Detailed section of the specification discusses conditions on the pattern radius in sinusoidal terms; and
- The Abstract at lines 11-14 states that the "conductor provides a conductive path around each loop that has a serpentine or oscillating configuration that renders the path around each loop greater than the circumference of the element."
- Most illustrated embodiments, though described as having conductive paths that oscillate between different radii, have radii that do not change in magnitude, but change only in sign or direction.

Intrinsic evidence from the specification supports that the only proper dictionary definition for "serpentine" in claim 25 should be *sinuous*, from American Heritage, or *winding or turning one way and another (sinuous)*, from Merriam-Webster, and not a "spiral".

Furthermore, neither dictionary explicitly lists the word "spiral" as an acceptable interpretation for the word "serpentine". Further, applicant's specification discloses no embodiments in which the conductor is spiral. Were applicant to have added a dependent claim expressly reciting a spiral conductor, the claim would have had no support. Claims generic to sinuous and spiral conductive paths have been canceled.¹

Accordingly, the term "serpentine path" in claim 25 is fairly interpreted as having a plurality of opposite curves. Certainly the record in this case makes it clear that a spiral path is not being claimed. The rejection of claims 25-27 under 35 U.S.C. §102(b) Coultais et al. should be withdrawn.

* * *

It is submitted that the application is in condition for allowance. An early allowance is respectfully requested.

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¹ While applicant has canceled claims that would cover a spiral conductor, applicant reserves the right to assert such claims that are patentable on other grounds and other claims in a subsequent divisional or continuing application.

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Respectfully submitted,

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